

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

J-SQUARED TECHNOLOGIES, INC., a)	
Canadian corporation, and J-SQUARE)	
TECHNOLOGIES (OREGON) INC., an)	
Oregon corporation,)	
)	
Plaintiffs,)	
v.)	C.A. No. 04-CV-960-SLR
MOTOROLA, INC., a Delaware corporation.)	
Defendant.)	

**EXHIBIT H TO
MOTOROLA'S MOTION TO STRIKE**

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ William W. Bowser

William W. Bowser (Bar I.D. 2239)
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OF COUNSEL:

Randy Papetti, Cory A. Talbot, Emily S. Cates
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40 N. Central Avenue
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Telephone: (602) 262-5311
Attorneys for Defendant

DATED: May 22, 2006

CORNELL•CATANA REPORTING SERVICES, 800-170 Laurier Ave. W., Ottawa, ONK1P 5V5
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Examination No. 06-0288.4

Court File No. CA 04-960-SLR

(District of Delaware)

IN THE UNITED STATES DISTRICT COURT

B E T W E E N:

J-SQUARED TECHNOLOGIES, INC., a Canadian Corporation, and
J-SQUARED TECHNOLOGIES (OREGON) INC., an Oregon Corporation

PLAINTIFFS

- and -

MOTOROLA, INC. A DELAWARE CORPORATION

DEFENDANT

DEPOSITION OF JEFFREY GIBSON, pursuant to an appointment
made on consent of the parties to be reported by
Cornell•Catana Reporting Services, on March 23, 2006,
commencing at the hour of 9:14 in the forenoon.

COURT COPY

APPEARANCES:

Sean J. Bellow

for the Plaintiffs

Randy Papetti and Emily S. Cates

for the Defendant

This Examination was taken down by sound recording
by Janice West at Ottawa, Ontario, Canada.

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1 BY MR. PAPETTI:

2 768. Q. Have you ever seen Exhibit 140 before?

3 A. Yes.

4 769. Q. What do you recognize it to be?

5 A. It is the report put together by the
6 Forensic Accounting Service that Cozen O'Connor asked to
7 put together on the J-Squared cases with Motorola.

8 770. Q. If you go to Page 3 of that Report, there's
9 a heading, Cases for Analysis. Do you see that?

10 A. Yes.

11 771. Q. It says, "The Analysis and Opinions included
12 in this Report are based primarily upon representations
13 provided by the Clients, schedules prepared by the
14 clients, and interviews with the client's personnel
15 familiar with the financial data information. Do you
16 see that?

17 A. Yes.

18 772. Q. Did you have discussions with the people
19 from Parente Randolph who prepared this Report?

20 A. Yes.

21 773. Q. Roughly how many discussions?

22 A. Three I think -- two or three.

23 774. Q. Any in person?

24 A. No.

25 775. Q. All telephonic?

26 A. Over the telephone, yes.

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1 776. Q. Was there also e-mails exchanged between you
2 and them?

3 A. Yes.

4 777. Q. It refers to interviews with the client's
5 personnel. Are you aware of anyone else at J-Squared
6 that Parente Randolph talked to?

7 A. No.

8 778. Q. Do you believe they talked to anyone else at
9 J-Squared besides you?

10 A. No.

11 779. Q. On any of the phone calls you were on with
12 them, was anyone else from J-Squared with you?

13 A. I don't believe so, no.

14 780. Q. It says, "Based primarily upon
15 representations provided by the client, schedules
16 prepared by the client."
17 Did you prepare some schedules for Parente Randolph to
18 consider?

19 A. Yes, I put an Excel Spreadsheet together --
20 a couple of Excel Spreadsheets together.

21 781. Q. Is that Exhibit 139?

22 A. Let me just look here.

23 782. Q. Do you have Exhibit 139 in front of you?

24 A. Yes. I'm just looking at it.

25 783. Q. Let me ask you -- did you ---

26 A. Yes. This would be what I gave them.

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1 751. Q. At some point, did you -- I'm moving forward
2 in time a little bit. At some point, did you come to
3 understand that there is a commission discrepancy
4 regarding the J-Squared Motorola Agreement on the
5 Raytheon Account? Do you recall that?

6 A. I don't think it was -- there was no
7 discrepancy.

8 752. Q. Well J-Squared thought it was entitled to
9 additional commissions than Motorola ---

10 A. No. J-Squared thought it was entitled to
11 the commissions per the contract.

12 753. Q. Correct and Motorola hadn't paid them and
13 there was some effort to try and figure out what the
14 problem was? Do you recall that?

15 A. Yes.

16 754. Q. Do you recall that Motorola ultimately
17 figured the issue out and paid J-Squared?

18 A. Paid as per the contract.

19 755. Q. Paid as per the contract. Correct.
20 Motorola gave as a -- well, I'll just show you. Get
21 Exhibit 126 please? You might read it. It might
22 refresh your recollection about the issue even though
23 you're not copied on the e-mail?

24 A. Okay.

25 756. Q. Ms Blair explains that what Motorola finally

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1 figured out was that it was the result of receiving a
2 New York Shipping Address on the activity from
3 Motorola's Distributor and she apologized for the length
4 of time it took to resolve it?

5 A. Well, we're the ones that actually pointed
6 that out to Motorola. That's what was happening.

7 757. Q. Right and Motorola investigated it and it
8 took awhile to figure out?

9 A. Right.

10 758. Q. When she figured out what happened, she cut
11 J-Squared a cheque? Correct?

12 A. Correct.

13 759. Q. Are you aware of any other accounts covered
14 by the Agreement between J-Squared and Motorola that J-
15 Squared earned a commission on under the Agreement that
16 J-Squared wasn't paid for?

17 A. Am I aware -- no.

18 760. Q. You can't point to any particular account
19 that you believe the commission that J-Squared was paid
20 was less than what J-Squared believes it was owed under
21 the Parties Agreement?

22 A. No.

23 761. Q. Do you have any reason to believe Ms Blair
24 wasn't sincere as to what the confusion was at Motorola
25 as to why they didn't pay this commission properly?

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1 A. I think it's a good thing that J-Squared
2 caught it and brought it to Motorola's attention because
3 they obviously didn't have the internal mechanisms to
4 catch it themselves.

5 762. Q. I understand that. A mistake had been made,
6 whether by the Distributor or by Motorola, but she gives
7 as her reason that it has a New York Shipping Address on
8 it. Do you have any reason to believe that she wasn't
9 sincere in what she explained to J-Squared?

10 MR. BELLEW: Objection.

O

11 THE WITNESS: I mean, I don't know. I mean I
12 wasn't involved. Part of these exhibitory I've never
13 seen. I'm not involved in some of this, so it's ---

14 BY MR. PAPETTI:

15 763. Q. That's fine. You don't have any reason one
16 way or another? Correct?

17 A. Sorry?

18 764. Q. You don't have any opinion one way or
19 another as to whether she was sincere in the explanation
20 she gives?

21 A. No.

22 765. Q. Did you ever find -- did you ever interact
23 with Ms Blair at all personally during the life of the
24 contract?

25 A. I don't believe so.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

J-SQUARED TECHNOLOGIES, INC., a)	
Canadian corporation, and J-SQUARE)	
TECHNOLOGIES (OREGON) INC., an)	
Oregon corporation,)	
)	
Plaintiffs,)	
v.)	C.A. No. 04-CV-960-SLR
MOTOROLA, INC., a Delaware corporation.)	
Defendant.)	

**EXHIBIT I TO
MOTOROLA'S MOTION TO STRIKE**

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ William W. Bowser

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Attorneys for Defendant

DATED: May 22, 2006

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Examination No. 06-0288.2

Court File No. CA 04-960-SLR

(District of Delaware)

IN THE UNITED STATES DISTRICT COURT

B E T W E E N:

J-SQUARED TECHNOLOGIES, INC., a Canadian Corporation, and
J-SQUARED TECHNOLOGIES (OREGON) INC., an Oregon Corporation

PLAINTIFFS

- and -

MOTOROLA, INC. A DELAWARE CORPORATION

DEFENDANT

DEPOSITION OF STEVEN BLOMME, pursuant to an appointment
made on consent of the parties to be reported by
Cornell•Catana Reporting Services, on March 21, 2006,
commencing at the hour of 1:34 in the afternoon.

APPEARANCES:

Sean J. Bellow

for the Plaintiffs

Randy Papetti and Emily S. Cates

for the Defendant

This Examination was taken down by sound recording
by Janice West at Ottawa, Ontario, Canada.

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1 416. Q. So you've known Julie for a time?

2 A. Yes.

3 417. Q. In here, Julie apologizes for the length of
4 time that it's taken to resolve the commission
5 discrepancy. Do you see that?

6 A. Yes, I do.

7 418. Q. Do these commission discrepancies come up
8 from time to time where a Rep or Sales Person believes
9 they've earned a commission and there's commission not
10 paid on it?

11 A. For sure. For sure.

12 419. Q. Is that that unusual?

13 A. Is it unusual? It happens from time to time.

14

15 420. Q. And Julie gives an explanation in here about
16 what caused the confusion on Motorola's end that it was
17 as a result of receiving a New York shipping address on
18 the activity from our Distributor and she goes on to
19 apologize? Do you see that?

20 A. Yes.

21 421. Q. Do you have any reason to believe that the
22 explanation Julie Blair provided was false?

23 A. I really know nothing about this or I can't
24 recollect anything about this matter but I wouldn't think
25 that she would make up things.

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1 422. Q. You don't have any reason to believe that
2 what she says ---

3 A. No.

4 423. Q. Okay. You can put that one aside if you
5 don't remember anything about it. Exhibit 126?

6 MR. BELLEW: You mean 127.

7 MR. PAPETTI: Exhibit 127 please.

8 **EXHIBIT NO. 127:** E-mail dated March 2, 2004 from
9 John Marshall to Steve Blomme regarding MCG -
10 Exhibit 4.

11 THE WITNESS: Do you want me to read this note?

12 MR. PAPETTI: Yes. Why don't you look at 127
13 particularly the e-mail at the bottom.

14 THE WITNESS: Okay, yes.

15 BY MR. PAPETTI:

16 424. Q. Is what you say -- the subject of your e-mail
17 at the bottom to Mr. Mitchell is MCG Exhibit 4 PMW
18 Analysis?

19 A. Correct. Yes.

20 425. Q. Was that Exhibit 125?

21 A. Yes, yes it is.

22 426. Q. Solves that mystery?

23 A. Yes.

24 427. Q. And you're sending that to Mr. Mitchell for
25 any comments?

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1 476. Q. Where did you get then the revenue year to
2 date figures for the design wins on here?

3 A. I probably would have looked at Point of Sale
4 Reports.

5 477. Q. So you've got Point of Sale Reports?

6 A. I had access to Point of Sale Reports, yes.

7 478. Q. Access to where?

8 A. Sorry?

9 479. Q. I mean, who had the reports that you were
10 given access to?

11 A. They would have come from the Head Office,
12 from the Main Office -- yes, Julie Blair was copying me
13 for a while but I'm not sure she copied me every time, so
14 I would have ---

15 480. Q. So Julie Blair provided you on a regular
16 basis -- or a roughly regular basis the POS Reports for
17 your territory?

18 A. Correct, correct.

19 481. Q. Do you have any reason to believe that J-
20 Squared (Oregon) was underpaid for any commissions it
21 earned during the time the Agreement was in effect?

22 A. Underpaid for commissions that were due and
23 during the term of the Agreement?

24 482. Q. Correct?

25 A. No, I don't think so.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

J-SQUARED TECHNOLOGIES, INC., a)	
Canadian corporation, and J-SQUARE)	
TECHNOLOGIES (OREGON) INC., an)	
Oregon corporation,)	
)	
Plaintiffs,)	
v.)	C.A. No. 04-CV-960-SLR
MOTOROLA, INC., a Delaware corporation.)	
Defendant.)	

**EXHIBIT J TO
MOTOROLA'S MOTION TO STRIKE**

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ William W. Bowser

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Telephone: (602) 262-5311
Attorneys for Defendant

DATED: May 22, 2006

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Examination No. 06-0288.3

Court File No. CA 04-960-SLR

(District of Delaware)

IN THE UNITED STATES DISTRICT COURT

B E T W E E N:

J-SQUARED TECHNOLOGIES, INC., a Canadian Corporation, and
J-SQUARED TECHNOLOGIES (OREGON) INC., an Oregon Corporation
PLAINTIFFS

- and -

MOTOROLA, INC. A DELAWARE CORPORATION
DEFENDANT

DEPOSITION OF CLAUDE LANGLOIS, pursuant to an appointment
made on consent of the parties to be reported by
Cornell•Catana Reporting Services, on March 22, 2006,
commencing at the hour of 9:13 in the forenoon.

APPEARANCES:

COURT COPY

Sean J. Bellow

for the Plaintiffs

Randy Papetti and Emily S. Cates

for the Defendant

This Examination was taken down by sound recording
by Janice West at Ottawa, Ontario, Canada.

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1 BY MR. PAPETTI:

2 1056. Q. And Ms Blair looks into it and says we have
3 finally determined that it was the result of receiving a
4 New York Shipping Address on this activity from our
5 Distributor and apologize for the length of time it has
6 taken to resolve it? Correct?

7 A. That is correct.

8 1057. Q. Okay and then she says, one cheque for \$1,843
9 is coming and then another cheque for 66K should be
10 coming in the next couple of weeks?

11 A. That is correct.

12 1058. Q. Did J-Squared receive those cheques to the
13 best of your knowledge?

14 A. To the best of my knowledge, it did.

15 1059. Q. Then she gives sort of an excuse about what
16 the problem was here -- that it was the result of
17 receiving a New York Shipping Address on the activity
18 from the Distributor? Do you see that in the first
19 paragraph?

20 A. Yes.

21 1060. Q. Do you have any reason to believe that the
22 excuse she gives is either not accurate or not sincere?

23 A. I don't have any reason to believe that.

24 1061. Q. Are you aware of any other account that ESG -
25 - excuse me, not ESG -- that J-Squared Canada should have

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1 contract expired on December 5 according to its terms?

2 Okay?

3 MR. BELLEW: Objection.

4 BY MR. PAPETTI:

5 1071. Q. Do you have any reason to believe that's not
6 correct -- December 5, 2003?

7 MR. BELLEW: Objection.

8 THE WITNESS: Contract. I mean, we conducted
9 business as usual with Motorola up until termination.

10 BY MR. PAPETTI:

11 1072. Q. So what you're referring to is the fact that
12 for another two and a half months or so, J-Squared
13 continued to make sales efforts and so you think that the
14 180 days should run from the date of the Termination
15 Letter? Is that what you're saying?

16 MR. BELLEW: Objection.

17 MR. PAPETTI: Is that what you're saying?

18 THE WITNESS: I agree with that.

19 BY MR. PAPETTI:

20 1073. Q. Okay, what I was asking you before was in
21 terms of any account in which you received a commission
22 on, do you have any reason to believe you were shorted
23 commissions -- you being J-Squared on any account that
24 you served?

25 MR. BELLEW: During the time that the contract

200

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1 was in effect? Was that ---

2 MR. PAPETTI: Yes, yes?

3 THE WITNESS: Other than Raytheon which was
4 corrected?

5 BY MR. PAPETTI:

6 1074. Q. Yes, other than Raytheon?

7 A. No.

8 MR. PAPETTI: Unless your Counsel has questions,
9 Mr. Langlois, I don't have any further questions so thank
10 you for coming.

11 MR. BELLEW: I have no questions.

12 MR. COURVILLE: This concludes the Deposition of
13 Claude Langlois. The number of tapes used was two. The
14 original video tapes will be retained by Baseline
15 Communications Incorporated located at 77 Auriga Drive,
16 Ottawa, Ontario, Canada. The time is now 13:37:40 --
17 going off the Record.

18 --- WHEREUPON THE DEPOSITION ADJOURNED AT THE
19 HOUR OF 1:37 IN THE AFTERNOON.

20 THIS IS TO CERTIFY THAT the foregoing is a true
21 and accurate transcription from the Record made by sound
22 recording apparatus to the best of my skill and ability.

23
24
25 Janice West, Court Monitor.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

J-SQUARED TECHNOLOGIES, INC., a)	
Canadian corporation, and J-SQUARE)	
TECHNOLOGIES (OREGON) INC., an)	
Oregon corporation,)	
)	
Plaintiffs,)	
v.)	C.A. No. 04-CV-960-SLR
MOTOROLA, INC., a Delaware corporation.)	
Defendant.)	

**EXHIBIT K TO
MOTOROLA'S MOTION TO STRIKE**

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ William W. Bowser

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Attorneys for Defendant

DATED: May 22, 2006

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Examination No. 06-0288.1

Court File No. CA 04-960-SLR

(District of Delaware)

IN THE UNITED STATES DISTRICT COURT

B E T W E E N:

J-SQUARED TECHNOLOGIES, INC., a Canadian Corporation, and
J-SQUARED TECHNOLOGIES (OREGON) INC., an Oregon Corporation

PLAINTIFFS

- and -

MOTOROLA, INC. A DELAWARE CORPORATION

DEFENDANT

DEPOSITION OF MICHAEL NYKOLUK, pursuant to an appointment
made on consent of the parties to be reported by
Cornell•Catana Reporting Services, on March 21, 2006,
commencing at the hour of 8:44 in the forenoon.

APPEARANCES:

Sean J. Bellow

Randy Papetti and Emily S. Cates

COURT COPY

for the Plaintiffs

for the Defendant

This Examination was taken down by sound recording
by Janice West at Ottawa, Ontario, Canada.

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1 on?

2 A. Yes. There was one account and I'm not sure
3 if it was cleaned up but there was one account -- I
4 think it was Rathion.

5 764. Q. There's an issue with Rathion and the
6 parties had discussions about that a couple of years
7 ago?

8 A. That's correct, yes.

9 765. Q. Are you aware of any other discrepancy
10 between what J-Squared believes it earned under the
11 Agreement with Motorola and what J-Squared was paid?

12 A. Yes.

13 766. Q. What else?

14 A. I believe that we earned revenue in a period
15 of time from when our contract was terminated prior to
16 when the renewal should have been put in place.

17 767. Q. You're talking about the two and a half
18 months between December 5 when the contract expired on
19 its terms and the Termination Letter that we've been
20 calling it was received in late February? Is that
21 correct?

22 MR. BELLEW: Objection.

O

23 MR. PAPETTI: Is that what you're referring to?

24 MR. BELLEW: Objection.

O

25 THE WITNESS: Yes.

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Tel: (613) 231-4664 1-800-893-6272 Fax: (613) 231-4605

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1 BY MR. PAPETTI:

2 768. Q. Any other discrepancies that you're aware of
3 between what J-Squared believes it earned and what it
4 was paid?

5 A. No.

6 769. Q. No other accounts that you can think of that
7 J-Squared believes it was entitled to be paid on?

8 A. No.

9 770. Q. The same answers with respect to J-Squared
10 (Oregon)?

11 A. Yes, I haven't heard of anything.

12 771. Q. I asked you some questions on whether J-
13 Squared had ever terminated any lines -- product lines
14 that -- because it didn't believe it was profitable to
15 continue representing those lines? Do you remember
16 that?

17 A. Yes.

18 772. Q. Have any manufacturers ever terminated J-
19 Squared or Suppliers ever terminated J-Squared?

20 A. Yes.

21 773. Q. Who?

22 A. Zilog. I believe that's pretty much it.

23 774. Q. So over the years when we've seen -- in some
24 of the documents we're looking at some Product Lines
25 coming and going those are generally because J-Squared

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

J-SQUARED TECHNOLOGIES, INC., a)	
Canadian corporation, and J-SQUARE)	
TECHNOLOGIES (OREGON) INC., an)	
Oregon corporation,)	
)	
Plaintiffs,)	
v.)	C.A. No. 04-CV-960-SLR
MOTOROLA, INC., a Delaware corporation.)	
Defendant.)	

**EXHIBIT L TO
MOTOROLA'S MOTION TO STRIKE**

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ William W. Bowser

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Telephone: (602) 262-5311
Attorneys for Defendant

DATED: May 22, 2006

Page 1 of 1

Talbot, Cory

From: Papetti, Randy
Sent: Wednesday, April 05, 2006 5:15 PM
To: 'Bellew, Sean'; 'Bowser, William'; Talbot, Cory; Cates, Emily; Patrick, SherryAnn
Subject: Expert Issues
Attachments: 1725853_1.DOC

Sean: Attached is a letter regarding issues related to your clients' expert report. Some of the issues, I suspect, will not be resolvable except via the Court (though I think we ought to talk about those issues, too), but the other issues go to clarification and documents we need to finish our expert report. I would appreciate your cooperation in getting us that information to avoid further delay.

I'm gone tomorrow and Friday, but back on Monday.

5/10/2006



Randy Papetti
40 North Central Avenue
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Admitted in: Arizona

Our File Number: 23897-00071

April 5, 2006

VIA FACSIMILE

Sean Bellew, Esq.
Cozen O'Connor
1201 N. Market Street
Chase Manhattan Centre, Suite 1400
Wilmington, DE 19801-1147

Re: *Motorola adv. J-Squared*

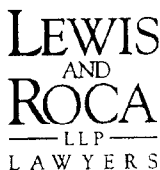
Dear Sean:

We have now had the chance to go through your clients' expert report, and the workpapers Mr. Gibson prepared to aid the expert, in some detail and I wanted to raise a few issues and to schedule Mr. Pocalyko's deposition.

1. **Issues Related to the 40% Underpayment Allegations.** Mr. Pocalyko assumes that, when paying both JST and JSO commissions owed under the contracts, Motorola underpaid those entities by 40%. He says that "JST indicated in discussions that the historical commission data was provided to them by Motorola. JST has estimated that the amounts detailed on Exhibit C were underreported by approximately 40 percent." (Report at 5). He makes a similar allegation based on what "JSO has estimated" with respect to JSO. (*Id.* at 6).

Two points. First, I sincerely am at a loss as to what is the basis for this 40% contention? We talked to Messrs. Gibson, Nykoluk, Langlois and Blomme and my recollection is that none of them had talked to the expert about this issue or claimed to have any personal knowledge about any underpayment of commissions owed to either JST or JSO, other than the Raytheon issue which was resolved two years ago. I realize that, under its interpretation of its agreement, West Coast Reps believes it was underpaid (how much is unclear), but that has to do with a difference of opinion regarding how to interpret WCR's specific agreement – a debate that is irrelevant to the JST and JSO contracts. In sum, the expert's report provides no basis for his 40% calculation other than "discussions" with JST or JSO management and, based on the depositions, it does not appear that JST or JSO management in fact have any idea about this issue. Please provide the evidentiary basis for the expert's calculations. As it is, we have no idea what it is we need to rebut.

Second, as you know, this allegation of systematic underpayment by Motorola is not pled in the complaint. You have stated that it was uncovered during discovery, but, again, what has been uncovered as to JST or JSO has not been disclosed. Moreover, our position is that it is not



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proper to add a new claim to a complaint via including it in an expert report and we object to its inclusion in the case on that basis. If your clients wish to include it, they need to move to amend their complaint.

2. **The JSO Trailing Commissions Claim.** On pages 5 and 6 of Mr. Pocalyko's report, he explains his methodology for calculating 180 days of commissions after the termination of JSO's contract.

In our mediation brief in February we pointed out to you that your clients' complaint contains no claim for any breach of the 180-day trailing commission provision in the parties' agreement. In fact, the complaint alleges that termination could occur under section 7.2A if JSO failed to perform its obligations, but contested whether there were grounds for terminating the contract based on any failure to perform. Now, apparently, JSO is claiming that 7.2A is irrelevant because of a breach of other provisions that are not mentioned in the complaint and that trailing commissions are due under paragraph 7.3. Again, if JSO wishes to assert a claim that Motorola breached the Agreement by failing to pay trailing commissions due under section 7.3 of the Agreement, it needs to seek leave to add such a claim. But it is not proper simply to add the claim via an expert's report, particularly when we have brought this to JSO's attention and JSO has failed to identify this theory of breach in response to pertinent discovery requests.

3. **How Much in Total Damages Has the Expert Calculated?.** We need clarification on one aspect of the expert's report. He repeatedly calculates categories of damages, but it is unclear what total amount of damages he has calculated. For example, his Exhibit E, which he titles as a "Summary of Damages – JST and JSO," includes amounts for four different categories of damages. But he never provides an actual total damages figure. Is it JST and JSO's position that the sum total of adding up the categories of damages is what JST and JSO is claiming? Or are some of the damage categories in Exhibit E mutually exclusive, or alternatives to other categories? Please clarify.

4. **Documents Provided to and Communications With the Expert.** On page 3 of Mr. Pocalyko's report, he states that Exhibit B is a "listing of the documents relied upon." We are entitled to receive a list of all documents he considered, not just relied upon, in coming to his conclusions and preparing his report. See FED. R. CIV. P. 26(a)(2)(B) (requiring identification of "the data or other information considered by the witness in forming the opinions"); *id.* Adv. Comm. note (emphasizing the duty to disclose not only the materials relied upon by the expert but also the additional materials the expert considered). It may be that this is a non-issue and that Exhibit B contains all the documents and materials relied upon by the expert, but, given the careful language Mr. Pocalyko used, we need clarification if that is the case.

Similarly, Mr. Gibson testified that he had been having e-mail correspondence with Mr. Pocalyko regarding the case. None of that has been produced. We are entitled to such communications not only under Rule 26, but also under Defendant's Request for Production 15,



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which asked for all "communications" sent to any expert JST intends to use in the case. Thus, please gather all communications between anyone at JST or JSO and your expert or his firm and get them to us.

5. **GE Fanuc.** In Ottawa we learned more about JST's relationship with GE Fanuc. We have subpoenaed documentation regarding, among other things, how much GE Fanuc has paid JST or its affiliates in order to argue that JST has not been harmed as much as it suggests as a result of its relationship ending with Motorola. We need this information in order to get complete our expert analysis, and I assume your client has it readily available. I would appreciate you providing the information sooner rather than later to avoid any delay in the schedule.

* * * * *

I realize your position may differ with ours on the amendment-of-pleadings issues raised in this letter. From a scheduling perspective, my short-term concern is much more on resolving the requests for clarification and additional information regarding Mr. Pocalyko's report so that we can complete our expert's report and get Mr. Pocalyko deposed. Thus, your prompt cooperation in resolving those issues would be greatly appreciated.

In terms of scheduling, we are going to need a couple additional weeks to disclose our expert's report – until April 27. Is your side agreeable to that? I would like to take Mr. Pocalyko's deposition on April 20, 21 or 25. Please let me know whether those dates work and where you would like to schedule that deposition.

Thanks.

Sincerely,

Randy Papetti

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

J-SQUARED TECHNOLOGIES, INC., a)	
Canadian corporation, and J-SQUARE)	
TECHNOLOGIES (OREGON) INC., an)	
Oregon corporation,)	
)	
Plaintiffs,)	
v.)	C.A. No. 04-CV-960-SLR
MOTOROLA, INC., a Delaware corporation.)	
Defendant.)	

EXHIBIT M TO
MOTOROLA'S MOTION TO STRIKE
REDACTED
ENTIRETY OF DOCUMENT
CONFIDENTIAL

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/s/ William W. Bowser

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